

a trade with the aggressor or passive participant until at least one of the aggressor and passive participants has finished trading. --

-- 36. (New) The trading system of claim 5, wherein the inhibited trade command is automatically executed if the period of time expires without the first and second participants transacting a trade. --

*68  
contra*

-- 37. (New) The system of claim 16 wherein at least one of said at least two participants can trade a plurality of securities, and wherein:

said plurality of trade execute keys includes a first plurality of sell keys each assigned to a different one of said securities, and a second plurality of buy keys each assigned to a different one of the same securities; and

whereby a participant may initiate a trade to sell or buy a particular security that is being bid or offered by pressing only the sell or buy key assigned to that security. --

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#### REMARKS

##### Summary of Office Action

Claims 1-5, 7-23 and 31-37 are pending in this case.

Claim 21 has been objected to as dependent from an incorrect base claim (claim 14).

Claims 1-5, 7-18 and 20-23 have been rejected under 35 U.S.C. §102(b) as anticipated by each of McCausland et al. U.S. Patent No. 5,243,331 and Kramer U.S. Patent No. 5,038,284.

Claim 19 has been rejected under 35 U.S.C. §102(b) as anticipated by McCausland and, alternatively,

under 35 U.S.C. §103(a) as obvious from Kramer in view of McCausland.

Claims 31-33 have been rejected under 35 U.S.C. §103(a) as obvious in view of McCausland and Kramer.

#### Summary of Reply to Office Action

Applicants have amended claim 21 to correct the dependency as suggested by the Examiner.

Applicants also have amended claims 1, 2, 4, 5, 7, 16, 21, 31, 32 and 33 and have added new claims 34-37, to more particularly point out and distinctly claim the invention.

Applicants traverse, and provide the following remarks with respect to the Examiner's rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a).

#### Reply to Anticipation Rejections Under 35 U.S.C. §102(b)

Claims 1-5, 7-18 and 20-23 have been rejected under 35 U.S.C. §102(b) as anticipated by each of McCausland and Kramer. These rejections are respectfully traversed.

#### Claims 1-5 and 7-15, And New Claims 34-36

In this group of claims, only claim 1 is independent. Independent claim 1 is not anticipated by McCausland or by Kramer for at least the reasons discussed below. Thus, none of the claims is anticipated.

Applicants respectfully submit that the Examiner's anticipation rejection is based at least in part on an incomplete reading of the claims. In comparing the claims to the cited references, the Examiner has focused on only a portion of the claim language without taking into consideration the rest of the claim language (see, e.g., Office Action at ¶4, discussion of claims 1 and 16 at pp. 3-4 and 6).

For instance, the Examiner states that McCausland and Kramer disclose the claimed "central server" (element (b)) because each discloses a "[c]entral server programmed to conduct trading sequences responsive to trade commands received from the workstation users." This, however, is not the language of the claim. The claim instead recites that the central server is:

"programmed to support a predetermined trading control logic wherein said trading control logic comprises a protocol of trade sequences ... wherein said protocol is directed to execute trade commands from said participants in a predefined way corresponding to a plurality of trade states defining the ability of various participants to participate in trading activity" (Emphasis added.)

The specification discloses at least five non-limiting examples of trade states that differently define the ability of various participants to trade: the Bid/Offer State, the Workup State, the Workdown State, the When State and the Second Lock State.

McCausland and Kramer do not disclose a plurality of trade states. The figure and passage in McCausland cited by the Examiner (Fig. 1, col. 22:43-63 and col. 24:7-63) describe that a participant may participate in trading by highlighting an issue, and then pressing a hit or take key to initiate a trade of that issue. If the Examiner asserts this to be a trade state, no other trade states are developed by McCausland which differently define how a trader may participate in trading. Similarly, none of the other McCausland passages cited by the Examiner on page 4 of the Office Action (col. 10:30-51, 11:64-68 or 23:1-5) discloses a plurality of trade states as claimed.

As for Kramer, that system is not even a trading system and for this reason alone does not disclose a plurality of trade states. Kramer instead is directed to a system for processing data that is entered by traders

concerning transactions that those traders have made outside of the system. The system includes a plurality of portable transaction stations for converting manually entered data relating to the transactions into signals and transmitting those signals, and for receiving signals and converting the received signals for display. The system reconciles and reports errors of trades entered by traders and contra-traders, reports quotes and transactions based on bid, ask, buy, sell and other information entered into the portable terminals, time stamps transactions, negates and voids transactions, etc. (See, e.g., Kramer at col. 1:8-14, col. 3:34-7:22, col. 10:33-11:30 and col. 12:3-12.) Applicants respectfully disagree with the Examiner that Kramer's keys that light up to indicate which keys are appropriate answers to menu questions is a disclosure of the claimed trade specific states (Office Action, p. 4). The keys are not used to initiate a trade, and that certain keys may be lit or not does not define how traders may trade.

Nor does McCausland or Kramer disclose the Second Look State of claim 1, particularly as amended. McCausland, in the passage cited by the Examiner (see Office Action, p. 4, citing col. 25:8-30), describes that "open" orders that originated from a trader's workstation may be cancelled by the trader. Open orders are bids and offers that have not yet traded. This is not describing a Second Look state. To clarify this, applicants have amended claim 1 to more particularly point out and distinctly claim what is being claimed with respect to the Second Look state.

Likewise, Kramer does not disclose the claimed Second Look State. Again, Kramer does not disclose any trade specific states, let alone a Second Look State, because it is not a trading system. The particular passage cited by the Examiner confirms this (col. 12:51-61). Kramer here merely describes that if a mismatch occurs in the

information about an already completed trade entered into the system by two traders, the system notifies the traders of the error. The traders may then correct the data in the system.

The foregoing remarks also apply to claims 2-5 and 7-15, as well as to new claims 34-36, because each is directly or indirectly dependent from claim 1. Because claim 1 is allowable, its dependent claims are allowable as well.

Claims 16-18 and 20-23, and New Claim 37

In this group of claims, only claim 16 is independent. Claim 16 was not, and as amended is not, anticipated by McCausland or Kramer for at least the reasons discussed below.

As with claim 1, the Examiner in applying these references has focused on only some of the claim language. For instance, the Examiner states that McCausland includes a "[c]ustom designed keypad with specially assigned keys" (Office Action p. 6). However, the claim language, as amended, recites:

"a trade command input means including said custom designed keypad wherein said keypad includes a plurality of trade execute keys, said keys programmed to be individually assigned to a particular security available for trading" (Emphasis added.)

McCausland does not disclose this.

For instance, McCausland does not disclose at least the emphasized "plurality of trade execute keys, programmed to be individually assigned to a particular security available for trading." In the preferred embodiment of this reissue application, examples of this are the Main Function Keys BUY (or SELL) - each of which is assigned to a different one of four securities (Bond Basis, Triple Old Bond, Old Bond, and Bond). As shown in the figures (e.g., Fig. 3), pressing a BUY key (or a SELL

key) causes a trade to be executed of the particular security to which the key is assigned.

McCausland, in contrast, shows only one HIT key and one TAKE key. These trade execute keys are used for all securities available for trading, and are not individually assigned to particular issues. See McCausland at col. 23:14-18, which explains that a trade is executed by a trader first highlighting on the display the issue desired to be traded, and then pressing HIT or TAKE followed by other keys (McCausland, e.g. at col. 23:14-29). Thus, the HIT and TAKE keys in McCausland are not individually assigned to a particular security available for trading but instead are used for all available issues.

Nor does Kramer disclose the claimed individually assigned trade execute keys. Kramer, as discussed above, is not a trading system and so does not have trade execute keys (individually assigned, or otherwise). Even so, in Kramer there is only one BUY key and one SELL key (which are used only for *recording* trades, not *executing* trades) for all issues (see BUY key 55 and SELL key 56 in Fig. 3a; col. 11:9-12; col. 17:43-45). A separate symbol key (SYM key in Fig. 3a) is provided as a field key that must also be used with other keys, in conjunction with the BUY and SELL keys, to identify the issue that has been bought or sold (col. 16, line 64 - col. 17, line 26).

Thus, claim 16 is not anticipated by either McCausland or Kramer. Because claim 16 is allowable, claims 17-18 and 20-23, which are dependent from claim 16, are allowable, as is new claim 37.

Reply to Obviousness Rejections under 35 U.S.C. §103(a)

Claims 31-33 have been rejected under 35 U.S.C. §103(a) as obvious over McCausland and Kramer. Claim 19 has also been rejected as obvious over this combination. These rejections are respectfully traversed.

Claims 31-33 - "Second Look"

The Examiner relies on McCausland and Kramer as disclosing "A Second Look State" (Office Action, p. 8). Claims 31-32, however, do not recite a "Second Look State" or related functionality. As for claim 33, it recites (as amended):

"at least one of said states enables a participant, in response to entry by said participant of a hit or lift trade command within a predetermined period of time following entry by another participant of a bid or offer command with respect to an item, to refuse or proceed with trading the item."

This limitation is not disclosed or suggested by McCausland or Kramer for at least the reasons discussed above with respect to claim 1.

Claims 31-33 - Dutch Auction

The Examiner has taken Official Notice of a Dutch auction to argue, apparently with respect to claims 31-32, that it is well known in such an auction to exclude third-party participants during negotiation of a transaction by first and second parties. This rejection is respectfully traversed.

Applicants traverse the Examiner's invocation of Official Notice. The Examiner has cited no prior art reference disclosing a Dutch auction operating as described by the Examiner. If the Examiner continues to maintain his reliance on the Dutch auction to reject the claims in light of the remarks included in the following paragraphs, applicants respectfully request the Examiner to cite such a prior art reference in the next Office Action. (See MPEP §2144.03.)

Applicants traverse the Examiner's rejections even assuming (for sake of argument only) that a Dutch auction, operating as described by the Examiner, exists in the prior art. Even if in the prior art, such an auction would not have rendered the claimed combinations obvious.

The last element of claim 31, as amended to more particularly point out and distinctly claim the invention, states:

"at least one of said states enables first and second participants to trade a desired volume of an item with one another at a defined price, to the exclusion of a third participant desiring to participate in the trading, until the occurrence of a predefined event and, upon the occurrence of said event, enables the third participant to trade with said first or second participants an additional volume of the item at said price without being able to exclude others from also participating in trading at the defined price."

And the last element of claim 32 states that:

"(a) first and second participants are enabled, until the occurrence of a predefined event, to trade a desired volume of an item with one another at a defined price to the exclusion of a third participant who enters a trade command to trade an additional volume at said price and, (b) upon the occurrence of said event, the entered trade command of the third participant is automatically executed without enabling the third participant to exclude others from participating in trading more volume at said price."

The foregoing elements are not disclosed in either McCausland or Kramer. The Examiner correctly concedes that neither McCausland nor Kramer discloses excluding a participant from participating in trading between other participants (see Office Action, p. 9).

Moreover, the Examiner cites to no suggestion in the prior art - including in the alleged prior art Dutch auction - to modify either McCausland or Kramer to implement the claimed combination. Without such a

suggestion, obviousness is not shown. *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351 (Fed. Cir. 2001).

Nor does the Dutch auction, as described by the Examiner, disclose these elements. The Examiner says that a person of ordinary skill in the art would have been motivated "to exclude others in order to prevent a barrage of conflicting bids/offers from arriving while the user is attempting to complete the transaction with the second party" (Office Action, p. 10). Given that motivation, it is apparent that after the third party is allowed to trade following an exclusive period for the first and second participants, another period of exclusivity would be provided to prevent a barrage of bids and offers arriving from other participants and interfering with the third party's negotiations. Claims 31-32, however, state that after the initial exclusive period has ended a third party can trade but without being able to exclude others from also participating in the trading at the defined price.

The Examiner's theorized Dutch auction thus teaches away from the claimed combination. This demonstrates nonobviousness. *Tec-Air, Inc. v. Denso Mfr. Michigan Inc.*, 192 F.3d 1353, 1360-61 (Fed. Cir. 1999).

#### Claim 19

The Examiner has rejected claim 19 for obviousness in view of McCausland and Kramer. This rejection is traversed.

Part of the basis for the Examiner's rejection is the assertion that Kramer discloses a trading system as in claim 16 (from which claim 19 depends). However, as discussed above with respect to claim 16, Kramer is not a computerized trading system but, rather, a system for reporting and reconciling trades that were made manually by traders outside of the system. Moreover, as also discussed, Kramer does not disclose at least the claimed plurality of trade execute keys. There is no suggestion to

modify Kramer to be a trading system, or to include such keys in that event.

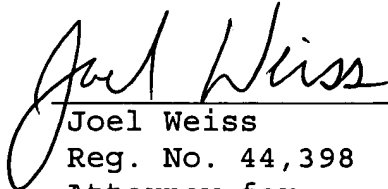
With respect to the subject matter of claim 19, as the Examiner concedes, Kramer does not disclose terminating the bid/offer state upon entry of a hit or lift. Neither does McCausland. At col. 24:64-67, cited by the Examiner (Office Action p. 11), McCausland states that a "hit" cancels an offer while a "take" cancels a bid. In other words, if a trader enters a hit (sell) command, that trader's existing offer (to sell) is cancelled, and if a trader enters a take (buy) command, that trader's existing bid (to buy) is cancelled. McCausland does not say or suggest that a Bid/Offer state is terminated as a consequence of a participant hitting a bid or taking an offer. Other bids, offers, hits and/or lifts may be entered, and trades executed, in McCausland just as they could be before.

#### Conclusion

For at least the reasons set forth above, applicants respectfully submit that the pending claims are neither shown nor suggested in the references, and that this application, as amended, is in condition for allowance.

Reconsideration and prompt allowance of this application are respectfully requested.

Respectfully submitted,

A handwritten signature in cursive script, reading "Joel Weiss", is written over a horizontal line.

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APPENDIX WITH MARKINGS TO SHOW CHANGES MADE

1. (Twice Amended) In combination in a data processing system for implementing a structured trading environment for transacting the purchase and sale of select items having a predetermined set of characteristics wherein said data processing system is operated by a plurality of trading participants through a [specific] communication platform to permit exchanging [positions regarding] offers and bids and for receiving select participant trade commands relating to said items, comprising:

a plurality of workstations comprising a display means for presenting to a participant information about pending market conditions as they relate to said items being traded and [the select positions taken] bids and offers entered by other participants in regard to said items; and

a [central]server, in communication with said workstations, [linked to said workstations and] programmed to support a predetermined trading control logic wherein said trading control logic comprises a protocol of trade sequences initiated from a bid/offer state by a participant hit or lift trade command wherein said protocol is directed to [implement] execute trade commands from said participants in a predefined way corresponding to [the development of] a plurality of trade [specific] states defining the ability of various participants to participate in [said] trading activity,

wherein said trade states [comprise] include a [Second Look State] state whereby the trading control logic, in response to detecting that an aggressor participant's hit or lift trade command would execute a trade in excess of what the aggressor participant may have intended, automatically enables the aggressor participant to decline, prior to execution, at least a portion of only the excess part of the trade.

2. (Amended) The trading system of claim 1 wherein said protocol is defined by a stored program comprising a logic structure that defines conditions where [a] the aggressor participant [becomes] may initiate a [trader] trade and conditions where passive participants may enter bid or offer commands to participate in [a] the trade.

4. (Twice Amended) The trading system of claim 1 wherein said trade states further [comprise a Bid/Offer State and] include a Workup State whereby the trading control logic, in response to an aggressor participant's hit or lift of the entire volume represented by one or more passive participants' bids or offers at a trade price, enables the aggressor participant and the first-in-time of the passive participants to trade with each other additional volume of the item at said trade price to the exclusion of another participant desiring to trade.

5. (Twice Amended) The trading system of claim 4 wherein said trade states further include a When State whereby the trading control logic, if a first participant has entered a bid and a second participant has entered an offer, inhibits execution of a hit or lift trade command subsequently entered by a third participant to allow a period of time for the first and second participants to transact a trade with each other by one of them entering a hit or lift trade command.

7. (Twice Amended) The trading system of claim 1 wherein said trade states further [comprise] include a Workdown State whereby the trading control logic, in response to an aggressor participant's hit or lift of less than the entire volume presented by one or more passive participants' bids or offers at a trade price, enables a

second aggressor to hit or lift remaining untraded volume at the trade price.

16. (Amended) A computer trading system for use by multiple participants, wherein at least two of the participants [wherein] each [participant] operates a custom designed keypad for data entry and receives information about market conditions from a display, the system comprising:

a data processor with associated data storage for providing a trading protocol that establishes trading hierarchy among participants;

[a trade command input means including said custom designed keypad] wherein said keypad includes a plurality of trade execute keys, said keys programmed to be individually assigned to a particular security available for trading[, said keypad further comprises a plurality of participant entry keys assigning trade commands to a particular participant]; and

said display [means] presents to the participants price and size information for [a trading information profile wherein said trading profile includes] pending offers and bids [at select price points and size] for at least one of the particular securities available for trading.

21. (Amended) The trading system of claim [14] 16 wherein said display means presents information on trade transactions and participant access is contingent on a system trading state.

31. (Amended) In combination in a data processing system for implementing a structured trading environment for transacting the purchase and sale of select items having a predetermined set of characteristics wherein said data processing system is operated by a plurality of

trading participants through a [specific] communication platform to permit exchanging [positions regarding] offers and bids and for receiving select participant trade commands relating to said items, comprising:

a plurality of workstations, each comprising a display means for presenting to a participant information about pending market conditions as they relate to said items being traded and [the select positions taken] bids and offers entered by other participants in regard to said items; and

a [central]server, in communication with said workstations, [linked to said workstations and] programmed to support a predetermined trading control logic wherein said trading control logic comprises a protocol of trade sequences initiated from a bid/offer state by a participant hit or lift trade command wherein said protocol is directed to [implement] execute trade commands from said participants in a predefined way corresponding to [the development of] a plurality of trade [specific] states defining the ability of various participants to participate in [said] trading activity, wherein:

at least one of said states enables first and second participants to trade a desired volume of an item with one another at a defined price, to the exclusion of [another] a third participant desiring to participate in the trading, until the occurrence of a predefined event and, upon the occurrence of said event, enables the [other] third participant to trade with said first or second participants an additional volume of the item at said price without being able to exclude others from also participating in trading at the defined price.

32. (Amended) In combination in a data processing system for implementing a structured trading environment for transacting the purchase and sale of select items having a predetermined set of characteristics wherein

said data processing system is operated by a plurality of trading participants through a [specific] communication platform to permit exchanging positions regarding offers and bids and for receiving select participant trade commands relating to said items, comprising:

a plurality of workstations, each comprising a display means for presenting to a participant information about pending market conditions as they relate to said items being traded and [the select positions taken] bids and offers entered by other participants in regard to said items; and

a [central] server, in communication with said workstations, [linked to said workstations and] programmed to support a predetermined trading control logic wherein said trading control logic comprises a protocol of trade sequences initiated from a bid/offer state by a participant hit or lift trade command wherein said protocol is directed to implement trade commands from said participants in a predefined way corresponding to the development of a plurality of trade specific states defining the ability of various participants to participate in said trading activity, wherein:

at least one of said states is a workup state in which (a) first and second participants are enabled, until the occurrence of a predefined event, to trade a desired volume of an item with one another at a defined price to the exclusion of a third participant who enters a trade command to trade an additional volume at said price and, (b) upon the occurrence of said event, the entered trade command of the third participant is automatically executed without enabling the third participant to exclude others from participating in trading more volume at said price.

33. (Amended) In combination in a data processing system for implementing a structured trading environment for transacting the purchase and sale of select

items having a predetermined set of characteristics wherein said data processing system is operated by a plurality of trading participants through a [specific] communication platform to permit exchanging positions regarding offers and bids and for receiving select participant trade commands relating to said items, comprising:

a plurality of workstations, each comprising a display means for presenting to a participant information about pending market conditions as they relate to said items being traded and [the select positions taken] bids and offers entered by other participants in regard to said items; and

a [central] server, in communication with said workstations, [linked to said workstations and] programmed to support a predetermined trading control logic wherein said trading control logic comprises a protocol of trade sequences initiated from a bid/offer state by a participant hit or lift trade command wherein said protocol is directed to implement trade commands from said participants in a predefined way corresponding to the development of a plurality of trade specific states defining the ability of various participants to participate in said trading activity, wherein:

at least one of said states enables a participant, in response to entry by said participant of a hit or lift trade command within a predetermined period of time following entry by another participant of a bid or offer command with respect to an item, to refuse or proceed with trading the item.